

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 586/18 OF 2017**

**A-ONE PRODUCTS & BROTHERS ..... APPLICANT**

**VERSUS**

**ABDALLAH ALMAS & 25 OTHERS..... RESPONDENTS**

**(Application for extension of time from the decision of the High Court of  
Tanzania (Labour Division) at Dar es Salaam)**

**(Nyerere, J.)**

**Dated the 18<sup>th</sup> day of September, 2015**

**in**

**Revision No. 16 of 2015**

**RULING**

**27<sup>th</sup> March & 11<sup>th</sup> April, 2019**

**LEVIRA, J.A.:**

The applicant, A- One Product and Bottlers LTD has, by a notice of motion, brought this application for extension of time within which to include a copy of drawn order of the High Court in Revision No. 16 of 2015 into the record of appeal, in Civil Appeal No. 257 of 2017. The application is made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). It is supported by an affidavit deposed by Masumbuko Roman Mahunga Lamwai, counsel for the applicant.

At the hearing on 27<sup>th</sup> day of March, 2019 the applicant was represented by Dr. Masumbuko Lamwai, learned counsel. Neither the respondents nor their counsel entered appearance despite the fact that

they were duly served. As a result, the application had to proceed under Rule 63(2) of the Rules in the absence of respondents and their counsel.

The applicant advanced three reasons for the delay to file drawn order which was missing in the record of appeal. The first ground as per the amended notice of motion being that, the applicant was not supplied with the drawn order in time. The other two grounds were stated in the affidavit of Masumbuko Roman Mahunga Lamwai, learned counsel for the applicant.

In paragraph three of the affidavit, it is stated that the counsel for the applicant misinterpreted the words appearing at page 169 of the Record of Proceeding as an order of the High Court in Revision No. 16 of 2015; while it was not a drawn order within the Court of Appeal Rules.

The third ground for delay is under paragraph 8 of the counsel's affidavit. He stated that, they received the correct drawn order on the 8<sup>th</sup> December, 2017. However, he was not able to lodge this application immediately because between the time of receiving the Drawn Order and lodging this application, the learned counsel had been traveling frequently to the High Court at Tabora, Moshi and Arusha. He went to Arusha twice to appear before the Court of Appeal.

In his submission, Dr. Lamwai, referred the affidavit in support of amended notice of motion. He stated that Civil Appeal No. 257 of 2017 was lodged on the 24<sup>th</sup> October, 2017 where, immediately thereafter they discovered that the drawn order they bound was not in law a drawn order. He observed that, under Rule 96(6) of the Rules, they had a right to file drawn order within 14 days of filing the appeal. However, they could not do so due to delay to be furnished with the properly drawn order. The same was supplied to them on 8<sup>th</sup> December, 2017.

It was his assertion that they wrote a letter requesting for the drawn order as per annexure "2A" to paragraph 5 of the affidavit within time; but, it took about a month and a half to be supplied with a correct copy of drawn order. According to him, failure to file the omitted document in time was not deliberate, they were prevented with good cause. He prayed for this application to be allowed, so that the appeal can be heard on merit for the best interest of justice.

Having gone through the record and submission by the counsel for the applicant, I wish to observe that, according to Rule 96(6) the omitted document from the record of appeal is supposed to be included in the record of appeal within 14 days of lodging the record of appeal without leave. However, this was not the case in the current matter, hence the current application. That being the case therefore, the main

issue calling for determination is whether the applicant has been able to advance good cause to justify extension of time.

It is a well-established principle of the law that, extension of time will only be granted upon showing good cause. Rule 10 of the Rules under which this application is made provides:

*"The Court may upon **good cause shown**, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference to that time as so extended". [Emphasis added]*

The record is clear, the applicant failed to file the intended document due to misinterpretation of the court proceedings as an order of the High Court. Immediately after realising that shortfall, they applied to the court to be supplied with proper order. However, it took time for them to be supplied as a result they were late. In regard to the ground that the learned advocate for the applicant had been travelling frequently to attend court sessions, I do not think that this ground need to detain me much. Apart from mere assertion, the counsel for the applicant has presented nothing to substantiate his assertion. He did not

even present a cause list to prove that really he attended Court sessions as he alleged. I wish to observe that, it is not enough to state that one has been travelling frequently; but, it is important and necessary to produce evidence to that effect.

The principle of the law is well settled that, whether or not to grant an application for extension of time is a matter of discretion of the court. In **Benedict Mumello v. Bank of Tanzania**, Civil Appeal No.12 of 2002 (unreported), the Court stated that:

*"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been sufficiently established that the delay was with sufficient cause."*

It is on record that the notice of appeal was lodged on 24<sup>th</sup> October, 2017. This means that the applicant was supposed to include the omitted document in the record by 8<sup>th</sup> November, 2017 without leave. According to paragraph 8 of the affidavit, the Drawn Order was obtained on the 8<sup>th</sup> of December, 2017 but, the current application was lodged on 20<sup>th</sup> December, 2017. Therefore, it took the applicant about 12 days after receiving the proper drawn order to lodge the current application.

I find it compelling at this juncture to note that, in paragraphs 4, 5, and 6 of the affidavit in support of the application, the counsel for the applicant stated clearly how he closely instructed Ms. Catherine Solomon, the learned advocate to ensure that they get a correct drawn order from the Court Registry. The question that follows is, what prevented him from instructing her to include the said order into the record of appeal immediately after receiving it? I think this question is very relevant because the counsel for the applicant is trying to show how meticulously he acted to ensure that they get the proper drawn order; but, he forgot to discharge his obligation of accounting for each day of delay.

It is also not clear as to whether the counsel for the applicant was on safari on all those twelve (12) days, or he failed to include the omitted document into the record of appeal due to some other reasons. Whatever the case, having considered the prevailing circumstances in this matter, I do not agree with the counsel for the applicant who stated in paragraph 9 of the affidavit and written submission that 12 days delay is not an inordinate delay. In my view, circumstances of each matter need to be taken into consideration in determining whether or not the delay is an inordinate delay.

As stated earlier, the mere assertion that the counsel for the applicant was travelling frequently does not justify the 12 days of delay. In **Bushiri Hassan v. Latifa Lukio Mashayo, Civil Application No. 3 of 2007** (unreported) it was held that:

*"....Delay of even a single day, has to be accounted for otherwise there would be no point of having rules prescribing periods within which certain steps have to be taken."*


I subscribe to the position set in the above decision. I as well, find out that the applicant herein has failed to advance good cause to justify extension of time for the failure to account for each day of delay.

In the event, this application lacks merit and it is hereby dismissed. This is a labour related matter so I make no order as to costs.

**DATED at DAR ES SALAAM this 9<sup>th</sup> day of April, 2019.**

M.C. LEVIRA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**